trust of the 40 acre estate is formidable. The Elder Son had constantly asserted and ultimately established that the assets of the PL.AR. firm were trust property. Those assets were all held in the name of the Karta, as was the 40 acre estate until transferred to the Elder Son. The appellant was therefore faced with the problem of explaining why that estate should be treated differently from the other assets held by the Karta. No explanation was forthcoming. Furthermore the Elder Son, in his defence in the Karta's Action, had himself asserted that the estate was trust property, and the trial judge was entitled to assume against the Elder Son that his pleading in the earlier action was a truthful one. The difficulty is to discern any ground upon which the trial judge could have come to a conclusion different from that which he reached.

As regards estoppel, the appellant's Counsel was faced with the fact that the Younger Son was not a party to the Karta's Action, and therefore he could not assert *res judicata* as against the Younger Son. Counsel tried to fall back on a submission that the Younger Son was in some way affected by the fact that he had in earlier litigation allied himself with the Karta in resisting the Elder Son's claim that all the property held by the Karta was joint family property; and that in those circumstances the Younger Son was now in some way estopped from alleging the existence of such a trust in relation to the 40 acres. This submission, on a brief examination, turned out to be untenable, quite apart from being a new point not raised below, and it was rightly abandoned by Counsel.

The submission that the Younger Son's claim against the Elder Son was time-barred, notwithstanding the fiduciary status of the Elder Son, does not feature directly in the decision of the Court of Appeal, and was not pressed by Counsel for the Elder Son in argument before their Lordships.

In the opinion of their Lordships the decision of the Federal Court of Appeal was clearly correct. Their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal be dismissed. The costs must be paid by the appellant.

Appeal dismissed.

Solicitors: *Bulcraig & Davis; Philip Conway Thomas & Co.*

SINGAPORE REPORTS

UNITED BEARINGS & MACHINERY PTE. LTD. v. AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION & ANOR.

[O.C.J. (Abdul Wahab Ghows J.) July 13, 1983]
[Singapore — Civil Suit No. 3955 of 1980]

Banking Law — Letter of credit — Bank collecting agents for 2nd defendants — Mandate from 2nd defendants/beneficiary to Bank to pay proceeds of letter of credit to plaintiffs — Equitable assignment perfected by notice — Bank liable to pay plaintiffs — Civil Law Act (Cap. 30), s. 4(6).

In January 1979 the 2nd defendants secured a contract to supply machinery and materials to the Paddy Marketing Board of Sri Lanka but did not have the funds to purchase the goods. So they entered into an arrangement with the plaintiffs under which the plaintiffs would finance such purchase on condition that the letter of credit which the 2nd defendants would be receiving from Sri Lanka would be assigned to the plaintiffs. At that time the 3 directors of the plaintiffs, Quek Chin Tiong, Ng King Soi and Ng Geok Tian were also directors of the 2nd defendants which had 2 other directors named Richard Foo and Chan Lam Oon.

The 1st defendants (the Bank) were the plaintiffs' bankers. According to Quek the Bank through their senior officer, Steven Ong, was told of the Sri Lanka project and the arrangement between the plaintiffs and the 2nd defendants in connection therewith. Steven Ong advised Quek to obtain a fresh letter of credit in the plaintiffs' favour or to request for a transferable letter of credit which he should get endorsed to the plaintiffs. In the alternative, as the 2nd defendants had an account with the Bank, the letter of credit could be negotiated through the 2nd defendants' account. However, the bank later discovered that it could not negotiate the letter of credit on account of the discrepancies therein so the letter of credit was sent out on a collection basis and thereafter the Bank acted merely as a collecting agent for the 2nd defendants.

On April 27, 1979 the 2nd defendants wrote to the Bank advising the Bank to transfer and credit the full proceeds of the letter of credit of the sum of US$194,158.95 to the account of the plaintiffs. This letter was carbon-copied to the plaintiffs who wrote to the Bank on April 30, 1979 to confirm the said arrangement. Subsequent letters of June 4, 1979 and a collection bill of June 8, 1979 from the 2nd defendants also requested for the transfer of the proceeds of the letter of credit to the account of the plaintiffs.

In September 1979 the 3 directors of the plaintiffs resigned from the 2nd defendants' Board. On September 20, 1979 they informed the Bank of this but that they were still the signatories to the account of the 2nd defendants until such time when they have received all the money due to them. On October 10, 1979 the 2nd defendants wrote to the Bank advising them to treat the instructions given in their letter of April 27, 1979 as cancelled. The plaintiffs subsequently wrote to the Bank several letters repeating the

request for transfer of the proceeds of the letter of credit to the plaintiffs' account. All these were ignored by the Bank.

In January 1980 it came to the knowledge of the plaintiffs that the Bank had closed the 2nd defendants' account whereupon they wrote to the Bank enclosing also another letter of the 2nd defendants instructing the Bank to transfer the said proceeds to the plaintiffs' account. On February 20, 1980 the 2nd defendants wrote to the Bank requesting for the remittance of US$194,158.95 in favour of the 2nd defendants. The Bank considered that the said letter of February 20, 1980 revoked the 2nd defendants' earlier mandates and remitted the sum of S$416,981.74 being the net proceeds of the letter of credit which the Bank had just received to the 2nd defendants account in the Sumitomo Bank Ltd. The Bank never replied in writing to any of the plaintiffs' letters regarding the said letter of credit. The Bank did not consider the plaintiffs a party to the letter of credit transactions and therefore the Bank was under no duty to reply to strangers enquiring about the said transactions.

The 2nd defendants were subsequently under liquidation. The Official Receiver as Liquidator indicated that if judgment were entered against the 2nd defendants he would accept a proof of debt from the judgment creditor.

The plaintiffs claimed a declaration that the said letters from the 2nd defendants to the Bank constituted a valid legal or equitable assignment in favour of the plaintiffs of the sums stated therein and a declaration that the Bank wrongfully paid the proceeds of the letter of credit to the 2nd defendants. The plaintiffs also sought to recover the sum of $240,390.06 from the Bank being the balance of the debt due to the plaintiffs from the 2nd defendants plus interest and costs.

Held: (1) this was a clear case of an equitable assignment perfected by notice to the debtor of the assignee's interest in the moneys assigned. It was also a case within section 4(6) of the Civil Law Act (Cap. 30);

(2) it was clear from the terms of the letters written by the 2nd defendants to the Bank directing the latter to transfer to the plaintiffs sums of money out of the proceeds of the letter of credit that their intention was to pass to the plaintiffs complete control of the sums described therein. That being so every such letter could be described as an absolute assignment;

(3) the Bank on receiving the letter of countermand from the 2nd defendants on February 20, 1980 should have paid the said amount of S$402,696.43 to the plaintiffs nevertheless or it should have applied to the court for relief by way of interpleader. At the very least, it should have informed the plaintiffs about the 2nd defendants' letter and given them enough time to apply for an injunction or to take any other steps to protect their interests;

(4) the Bank was therefore liable to pay to the plaintiffs the sum of S$240,390.06 with interest as claimed. The Bank was entitled to be wholly indemnified by the 2nd defendants.

Cases referred to:

(1) *Williams* v. *Everett* 14 East 582; 104 E.R. 725

(2) *Morrell* v. *Wootten* 16 Beav. 197; 51 E.R. 753

(3) *William Brandt's Sons & Co.* v. *Dunlop Rubber Co.* [1905] A.C. 454, 462.

(4) *Hughes* v. *Pump House Hotel Co.* [1902] 2 K.B. 190.

(5) *Jones* v. *Farrell* 1 De G. & J. 208, 218; 44 E.R. 703

CIVIL SUIT.

C.H. Smith for the plaintiffs.

Foo Yew Heng for the defendants.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: In January 1979 the 2nd Defendants (Rol Conveyors Pte. Ltd.) secured a contract to supply machinery and materials to the Paddy Marketing Board of Sri Lanka but did not have the funds to purchase the goods. So they entered into an arrangement with the Plaintiffs (United Bearings and Machinery Pte. Ltd.) under which the Plaintiffs would finance such purchase on condition that the L/credit which the 2nd Defendants would be receiving from Sri Lanka would be assigned to the Plaintiffs. At that time the three directors of Plaintiff company, Quek Chin Tiong, Ng King Soi and Ng Geok Tian, were also directors of the 2nd Defendant company which had two other directors named Richard Foo and Chan Lam Oon.

The 1st Defendants, American Express International Banking Corporation (hereinafter called "the bank") were the Plaintiffs' bankers and Quek Chin Tiong, one of Plaintiffs' directors, was well known to Steven Ong, a senior officer of the bank. The bank granted credit lines and overdraft facilities to the Plaintiffs in 1973 and thereafter Quek and Steven Ong were in frequent contact with each other. Quek told Steven Ong about the L/credit from Sri Lanka and asked him if the bank could negotiate it for the 2nd defendants and transfer the proceeds thereof to the Plaintiffs' account. Steven Ong asked to see the L/credit and so Quek and Ng King Soi took Richard Foo to the bank and introduced him to Steven Ong. According to Quek they told Steven Ong about the Sri Lanka project and the arrangement between the Plaintiffs and the 2nd Defendants in connection therewith. Steven Ong said that they might have mentioned the said project to him but he did not apply his mind to it as he considered it to be an internal matter between the Plaintiffs and the 2nd Defendants. He said he advised Quek to obtain a fresh L/credit in Plaintiffs' favour or to request for a transferable L/credit which he should get endorsed to the Plaintiffs but Quek replied that his suggestions were not practical as

the purchaser in Sri Lanka was a Government body. Steven Ong then told Quek that as the 2nd Defendants had an account with the bank, the L/credit could be negotiated through the 2nd Defendants' account. According to Steven Ong, the bank later discovered that it could not negotiate the L/credit on account of the discrepancies therein so the L/credit was sent out on a collection basis and thereafter the bank acted merely as a collecting agent for the 2nd Defendants.

On April 27, 1979 the 2nd Defendants wrote the following letter to the bank and sent a copy thereof to the Plaintiffs:—

"FAB/TSC/G1426 April 27, 1979

American Express International Banking Corporation
Shing Kwan House
Singapore 1

Dear Sirs,

RE: LETTER OF CREDIT NO. 79/849

We would refer to the above letter of credit No. 79/849 in favour of Rol Conveyors Pte Ltd. from the Paddy Marketing Board and negotiable through the Bank of America in which a photostat copy is enclosed for your reference.

We intend to ship the goods on May 15, 1979. Thereafter when the proceeds of the Letter of Credit be credited to our account, we wish to confirm and advise you that the full proceeds of the Letter of Credit amounting to US$ 194,158.95 (United States Dollars One Hundred Ninety Four Thousand, One Hundred Fifty Eight and Cents Ninety Five only) be transfer and credit to the account of United Bearings and Machinery Pte Ltd. account No. 0201-1.

We thank you.

Yours faithfully
ROL CONVEYORS PTE. LTD.

Sd; Ng King Soi
c.c. United Bearings and Machinery Pte. Ltd."

On April 30, 1979 the Plaintiffs sent to the bank a letter referring to the 2nd Defendants' letter of April 27, 1979 and asking the bank to confirm whether the arrangement set out in the penultimate paragraph thereof was acceptable to it. The bank did not reply to this letter but, according to Steven Ong, he might have told Quek that the bank would only act on the instructions of the beneficiaries and that as far as the bank was concerned it was dealing only with the 2nd Defendants in respect of the L/credit. Steven Ong added that when he received the 2nd Defendants' letter of April 27, 1979 he regarded it as a mandate from the 2nd Defendants to transfer the proceeds of the L/credit to the Plaintiffs' account after it was received. He said he did not view this letter as an assignment.

The 2nd Defendants on June 4, 1979 sent to the bank the following letter:—

"FAB/WH/G1447 June 4, 1979.

American Express International Banking
Corporation, Shing Kwan House
Singapore

ATTN: MR. CHAN, OUTWARD BILLS DEPARTMENT

Dear Sirs

Re: Drawn under People's Bank, Colombo Letter of Credit No. 79/849 dated January 29, 1979

In lieu of the discrepancy and the absence of certain documents that called for the above letter of Credit, please forward these documents to Bank of America and instruct them to be sent on collection basis.

We understand that the amount will be credited to our account upon payment received from Bank of America.

Upon payment received from Bank of America kindly transfer the full proceeds to the account of United Bearings and Machinery Pte Ltd. account No. 0201-1 as per our letter ref: FAB/TSC/G1426 dated April 27 1979.

Yours faithfully

sd: ....."

The collection bill dated June 8, 1979 forwarded to the bank by the 2nd Defendants contained the following special instructions:—

"Special Instructions: Please send the subject bills to the opening bank for collection. We confirm the proceeds will be credited to our account upon funds received from the opening bank. Upon proceeds credited to our account, kindly transfer the amount to United Bearings and Machinery Pte. Ltd. as per our letter ref: FAB/TSC/G1426 dated April 27, 1979."

In September 1979 the three directors of Plaintiff company resigned from the 2nd Defendants' Board and on September 20, 1979 the Plaintiffs wrote the following letter to the bank:—

"September 20, 1979

Mr. Steven Ong
American Express International Banking Corp
Shing Kwan House
Singapore 1

Dear Mr. Ong:

We wish to inform you that we are no longer associated with Rol Conveyor Pte. Ltd.

Though we are still the signatories to their account this is because we still wish to control their finance until such time when we receive the complete amount due to us.

We trust that the above statement will clarify our position regarding this account.

Yours faithfully
UNITED BEARINGS AND MACHINERY PTE. LTD.

SD: C.T. Quek"

Then on October 10, 1979 the bank received the following letter from the 2nd Defendants:–

"FAB/TSC/G1509 October 10, 1979.

American Express International Banking Corp
Shing Kwan House
Singapore 0104

Dear Sirs

RE: LETTER OF CREDIT NO. 79/849

We refer to our letter reference FAB/TSC/G1426 dated April 27, 1979.

We hereby instruct you to treat the instructions given in our letter of April 27, 1979 as cancelled and shall have no effect thereof.

We shall be pleased to receive confirmation to the above.

Yours faithfully
ROL CONVEYORS PTE. LTD.

Sd: Chan and Richard"

According to Steven Ong, the aforesaid letter of October 10, 1979 revoked the 2nd Defendants' mandate dated April 27, 1979. Quek's evidence was that the Plaintiffs never received a copy of this letter. However, on that day, October 10, 1979, the Plaintiffs wrote the following letter to the bank:-

Oct. 10,1979

"American Express International Banking Corp
Shing Kwan House
Singapore 0106

Dear Sirs:

AMERICAN EXPRESS COLLECTION OC 292/79 FOR US$194,158.95 DRAWN UNDER THE PEOPLE'S BANK COLOMBO LC NO. 79/849 DD JAN 29, 1979.

We write to remind you that Rol Conveyors Pte. Ltd. have requested you to pay us the proceeds of Letter of Credit No. 79/849 of January 29 when received and that we, ourselves, have also written to you confirming the arrangement.

As the arrangement referred to constituted the consideration for our supply of goods to Rol Conveyors Pte. Ltd. for the purpose of carrying out a contract which they had entered into and in respect of which the said Letter of Credit represents payment, we are naturally anxious that the equitable assignment to us of the proceeds of the Letter of Credit will be carried into effect as soon as possible.

Kindly confirm and we thank you.

Yours faithfully
UNITED BEARINGS AND MACHINERY PTE. LTD.

Sd: C.T. Quek"

On the same day, Quek had a talk with Steven Ong and on October 12, 1979 Quek sent the following letter to the bank which purports to contain the gist of this conversation:–

Oct. 12, 1979

"American Express International Banking Corp
Shing Kwan House
4 Shenton Way
Singapore 0106

Dear Sirs:

RE LETTER OF CREDIT NO. 79/849

We refer to the conversation between your Mr. Steven Ong and the undersigned on October 10 re the above Letter of Credit.

The undersigned was given to understand by your Mr. Ong that your bank can only act on the instructions of the beneficiary of the above Letter of Credit.

We wish to point out that your bank have already received the beneficiary's instructions to pay us the proceeds as and when received by your bank. We have confirmed the arrangement and have reminded you in our letter of October 10 that an equitable assignment of the proceeds to us has now been effected.

We enclose an original letter addressed to your bank from Rol Conveyors Pte. Ltd. which confirms the assignment to us.

We would like your bank to confirm whether this assignment can be further revoked by the beneficiary.

Yours faithfully
UNITED BEARINGS AND MACHINERY PTE. LTD.

Sd: C.T. Quek"

Attached to Plaintiffs' letter of October 12,

1979 was the following letter from the 2nd Defendants:—

"FAB/TSC/G1511 October 11, 1979

American Express International Banking Corpn.
Shing Kwan House
Singapore

Dear Sirs,

RE: LETTER OF CREDIT NO. 79/849

We would refer to the above letter of credit No. 79/849 in favour of Rol Conveyors Pte. Ltd. from the Paddy Marketing Board and negotiable through the Bank of America.

As you are aware the goods have been shipped on May 15 1979, thereafter when the proceeds of the said letter of credit be credited to our account amounting to US$ 194,158.95 (United States Dollars One Hundred Ninety four Thousand One Hundred Fifty eight and Cents Ninety five only) we wish to confirm and advise you that only upon the receipt of the proceeds of this mentioned letter of credit, an amount of S$362,696.43 (Singapore Dollars Three Hundred Sixty Two Thousand Six Hundred Ninety Six And Cents Forty Three Only) be transferred and credit to the account of United Bearings and Machinery Pte. Ltd., Account No. 0201-1.

We thank you.

Yours faithfully
ROL CONVEYORS PTE. LTD.

Sd: Chan and Richard"

On December 3, 1979 the Plaintiffs wrote to the bank enclosing a letter dated November 30, 1979 from the 2nd Defendants regarding the said L/credit both of which are reproduced below:—

December 3, 1979

"American Express International Banking Corp,
Shing Kwan House
4 Shenton Way
Singapore 0106

Dear Sirs

AMERICAN EXPRESS COLLECTION OC 292/79 FOR US$194,158.95 DRAWN UNDER THE PEOPLE'S BANK, COLOMBO LC NO. 79/849 DD JAN 29 1979

We enclose original letter from Rol Conveyors Pte. Ltd. addressed to you re the above Letter of Credit.

They have now requested you to credit the amount of S$402,696.43 to our account instead of S$362,696.43 as requested in their letter REF: FAB/TSC/G1511 dated October 11, 1979.

Please arrange to credit our amount accordingly upon receipt of the proceeds of the Letter of Credit and advise.

Yours faithfully
UNITED BEARINGS & MACHINERY PTE. LTD.

SD: Ng King Soi."

"FAB/TSC/G1543

November 30, 1979

American Express International Banking Corpn
Shing Kwan House
Singapore

Dear Sirs

RE: LETTER OF CREDIT NO. 79/849

We would refer to our previous letter dated October 11, 1979 covering the above letter of credit No. 79/849 in favour of Rol Conveyors Pte. Ltd. from Paddy Marketing Board and negotiable through the Bank of America.

When the proceeds of the said letter of credit be credited to our account amounting to US$194,158.95 (UNITED STATES DOLLARS ONE HUNDRED NINETY FOUR THOUSAND ONE HUNDRED FIFTY EIGHT AND CENTS NINETY FIVE ONLY). We wish to confirm and advise you that only upon the receipt of the proceeds of this mentioned letter of credit, an addition amount of S$40,000.00 (SINGAPORE DOLLARS FORTY THOUSAND ONLY) be transferred and credited to the account of United Bearings and Machinery Pte. Ltd., Account No. 0201-1.

The amount now stands at S$402,696.43 (SINGAPORE DOLLARS FOUR HUNDRED TWO THOUSAND SIX HUNDRED NINETY SIX AND CENTS FORTY THREE ONLY)

We thank you.

Yours faithfully,
Rol Conveyors Pte. Ltd.

Sd: ... Chan ... Richard"

In January 1980 it came to the Plaintiffs' knowledge that the bank had closed the 2nd Defendants' account whereupon they wrote the following letter to the 2nd Defendants:—

"Rol Conveyors Pte. Ltd. January 15, 1980
163-B Goldhill Shopping Centre
Thomson Road
Singapore 1130

Dear Sirs:

It has come to our knowledge that the American Express International Banking Corporation has closed your account

with them. This has caused us some alarm. You will recollect that we agreed to withhold the commencement of proceedings against you in consideration of your giving us what is, in effect, an equitable charge on the moneys payable to you under Letter of Credit No. 79/849. You carried the agreement into effect by giving the direction contained in your letter to the Bank of November 30, 1979 of which you sent us a copy. We, on our part, did not proceed against you legally.

If it is correct that the Bank has closed your account we consider that you should at once inform the Bank that, although you account has been closed, the direction to pay us still stands. We shall appreciate receiving from you a copy of the communication which you will, no doubt, receive from the Bank in reply to the letter which we now ask you to send.

Yours faithfully
UNITED BEARINGS AND MACHINERY PTE. LTD.

Sd: Ng King Soi"

Then on January 18, 1980 the Plaintiffs wrote to the bank enclosing a letter addressed to the bank dated January 16, 1980 written by the 2nd Defendants. Both letters are reproduced below:-

"American Express International Banking Corporation
Shing Kwan House
Shenton Way
Singapore

January 18, 1980

Dear Sirs:

AMERICAN EXPRESS COLLECTION OC 292/79 FOR US$194,158.95 DRAWN UNDER THE PEOPLE'S BANK, COLOMBO L/C NO. 79/849 DD JAN 29 1979

Further to our letter of December 3 re the above Letter of Credit, we now enclosed M/S Rol's Conveyors Pte. Ltd. letter to you regarding their latest instruction.

Will you be kind enough to act accordingly and advise.

Your faithfully
UNITED BEARINGS AND MACHINERY PTE. LTD.

Sd: NG King Soi"

January 16, 1980

"FAB/TSC/G1564

American Express International Banking Corpn
Shing Kwan House
Singapore

Dear Sirs,

Ref: OUR BILL FOR US$194,158.95 DRAWN ON PADDY MARKETING BOARD, COLOMBO UNDER THE PEOPLE'S BANK, COLOMBO L/C NO. 79/849. YOUR REF: OC 292/79

We would refer to the above letter of credit No. 79/849 in which Rol Conveyors Pte. Ltd., is the beneficiary.

In view that at present we do not have an account with you, we wish to confirm and advise you that upon the receipt of the proceeds of this mentioned letter of credit, an amount of S$402,696.43 (SINGAPORE DOLLARS FOUR HUNDRED AND TWO THOUSAND SIX HUNDRED NINETY SIX AND CENTS FORTY THREE ONLY) be transferred and credited to the account of United Bearings and Machinery Pte. Ltd., Account No. 0201-1. The balance and after your charges if any be made directly to Rol Conveyors Pte Ltd, Account No. 118003 of the Sumitomo Bank Ltd., Ground Floor, DBS Building, 6 Shenton Way, Singapore 0106.

We thank you.

Yours faithfully
ROL CONVEYORS PTE. LTD.

Sd: ... Chan ... Richard"

However, on February 20, 1980 the bank received from the 2nd Defendants the following letter:–

February 20, 1980

"American Express International Banking Corpn, Shing Kwan House
Singapore

ATTENTION: MR WONG, OUTWARD BILL DEPARTMENT

Dear Sirs,

REF: OUR BILL FOR US$194,158.95 DRAWN ON PADDY MARKETING BOARD, COLOMBO UNDER THE PEOPLE'S BANK, L/C NO. 79/849. YOUR REF OC 292/79

Reference is made to our previous letter dated January 16, 1980 of the above letter of credit No. 79/849.

We understand that the remittances is now cleared and in view of certain prevailing matters in which now arises in our company, we are to instruct you to remit the full amount of US$194,158.95 after deducting whatever charges incurred and make the payment in draft in Singapore currency favouring Rol Conveyors Pte. Ltd.

We thank you.

Yours faithfully
ROL CONVEYORS PTE. LTD.

Sd: ... Chan ... Richard"

According to Steven Ong, this letter dated February 20, 1980 revoked the 2nd Defendants' earlier mandates and, acting on the instructions contained therein, the bank on the same day remitted to the 2nd Defendants' account in the Sumi-

tomo Bank Ltd. the sum of S$416,981.74 being the net proceeds of the L/Credit which the bank had received on the previous day from its New York office.

The bank never replied in writing to any of the Plaintiffs' letters regarding the said L/credit. When asked why the bank had not done so and why it had not informed the Plaintiffs on February 20, 1980 of its intention to pay over to the 2nd Defendants the proceeds of the L/credit, Steven Ong's reply was to the effect that the Plaintiffs were not a party to the L/credit transactions and the bank was under no duty to reply to strangers enquiring about the aforesaid transactions or to give them any information relating thereto.

The Plaintiffs contend that the letters dated April 27, June 4, October 11 and November 30 and the letter dated January 16, 1980 from the 2nd Defendants to the bank constituted a valid legal and/or equitable assignment in favour of the Plaintiffs of the amounts stated in the said letters. Quek explained that the amounts assigned to the Plaintiffs were different in the letters dated April 27, October 11 and November 30, 1979 because the 2nd Defendants had a running account with the Plaintiffs and the letters dated October 11 and November 30 showed the amounts the 2nd Defendants owed the Plaintiffs on those dates.

The 2nd Defendant company is now being wound up and the Official Receiver as liquidator did not appear in these proceedings. He has indicated that if judgment were entered against the 2nd Defendants he would accept a proof of debt from the judgment creditor.

The Plaintiffs now claim a declaration that the abovementioned letters from the 2nd Defendants to the bank constitute a valid legal or equitable assignment in favour of the Plaintiffs of the sums stated therein and a declaration that the bank wrongfully paid the proceeds of the L/credit to the 2nd Defendants. The Plaintiffs also seek to recover the sum of $240,390.06 from the bank being the balance of the debt due to the Plaintiffs from the 2nd Defendants plus interest and costs.

The bank's defence was neatly summarised by its counsel as follows:– "There was no assignment legal or equitable. The 2nd Defendants' instructions to the bank were countermandable. There was no privity of contract between the Plaintiffs and the bank. The bank had never agreed or promised to hold the moneys for and on behalf of the Plaintiffs." He cited *Williams* v. *Everett*[1] wherein Lord Ellenborough is reported to have stated:– "It is entire to the remitter to give and countermand ... as often as he pleases ... until by some engagement entered into by themselves with the person who is the object of the remittance, they have precluded themselves from so doing." *Morrell* v. *Wootten*[2], contains observations to the same effect. There Sir John Romilly M.R. held that an order given by a man to a banker to pay over a sum to a third person was a mere naked authority to pay which could be revoked. Other cases cited by counsel for the bank confirmed the aforementioned rule that a mere authority to pay money out of a fund is revocable and gives no right to any third party except where the agent has expressly or impliedly promised the third party to pay him such money or to receive or hold such money on his behalf or for his use, in which case he is personally liable to pay such third party, or to receive or hold such money on his behalf or for his use, as the case may be, even if he has had fresh instructions from his principal not to pay such third party – see *Bowstead* on Agency 14th Ed. Art. 124.

As it is common ground that the instructions to the bank contained in the letter dated January 16, 1980 written by the 2nd Defendants superseded all previous instructions in regard to the L/credit No. 79/849, I will focus my attention on this letter.

Two questions arise in this case: (1) Is the letter dated January 16, 1980 merely a bare authority or does it constitute an equitable and/or legal assignment as claimed by the Plaintiffs? and (2) Was notice given to the bank that the Plaintiffs were interested in the money? Quek said in evidence that the 2nd Defendants had no funds to purchase machinery and materials for the Sri Lanka project so Plaintiffs advanced them the funds they needed on occasions and purchased the machinery and materials they required for such project on condition that the L/credit would be assigned to the Plaintiffs. Then Ng King Soi and he took Richard Foo to the bank and introduced the latter to Steven Ong. This evidence is not disputed. According to Quek, he told Steven Ong about the aforesaid arrangement between the Plaintiffs and 2nd Defendants and asked if the bank would negotiate the L/credit for the 2nd Defendants. Steven Ong did not recall that

he was informed about this arrangement but added that when Quek introduced Richard Foo to him he knew that they were doing some business together. Regarding the L/credit, Steven Ong said that he suggested to Quek that as the Plaintiffs were not the beneficiaries therein the bank could only handle the transaction for the Plaintiffs if Quek obtained a fresh L/credit issued in Plaintiffs' favour or if he obtained a transferable L/credit and got it endorsed to his company. Why should Steven Ong make these suggestions unless he had been informed of Plaintiffs' interest in the L/credit? In any case when the bank received Plaintiffs' letter of October 10, 1979 it got notice of the fact that the Plaintiffs were claiming that the 2nd Defendants' instructions constituted an equitable assignment of the proceeds of the L/credit for valuable consideration.

The relationship between the 2nd Defendants and the Plaintiffs is set out clearly in the letter dated January 15, 1980 which the Plaintiffs sent to the 2nd Defendants after learning of the closure of the 2nd Defendants' account with the bank. On receiving this letter the 2nd Defendants wrote the letter addressed to the bank to transfer to Plaintiffs' account No. 0201-1 the sum of S$402,696.43 out of the proceeds of the L/credit No. 79/849. The 2nd Defendants gave this letter to the Plaintiffs and the Plaintiffs sent it to the bank under cover of their letter of January 18, 1980 asking the bank to act accordingly and advise. I cannot think of a clearer case of an equitable assignment perfected by notice to the debtor of the assignee's interest in the moneys assigned.

But it was contended by the bank that none of the letters written by the 2nd Defendants to the bank purported to be an assignment or used the language of an assignment. An equitable assignment does not always take the form of an assignment. As Lord Macnaghten said in *William Brandt's Sons & Co.* v. *Dunlop Rubber Co.*[3] an equitable assignment "may be addressed to the debtor. It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission. The language is immaterial if the meaning is plain. All that is necessary is that the debtor should be given to understand that the debt has been made over by the creditor to some third person. If the debtor ignores such a notice, he does so at his peril. If the assignment be for valuable consideration and communicated to the third person, it cannot be revoked by the creditor or safely disregarded by the debtor". In that case the debtors disregarded the notice and paid the wrong people. They were ordered by the House of Lords to pay the money over again, and to pay it to the right person.

In our present case the Plaintiffs' case was put in two ways. It was presented as a simple case of equitable assignment perfected by notice. It was also presented as a case within section 4(6) of the Civil Law Act (Cap. 30 of the 1970 Revised Edition). I have decided for the above reasons that there was a good equitable assignment in Plaintiffs' favour perfected by notice. I am also of the view this assignment was also a valid legal assignment.

In *Hughes* v. *Pump House Hotel Company*[4] the words "any absolute assignment" appearing in section 25(6) of the Judicature Act, 1873, (since repealed) which is *in pari materia* with section 4(6) of our Civil Law Act, were examined. Mathew L.J. in his judgment at p. 193 remarked:– "In every case of this kind, all the terms of the instrument must be considered; and, whatever may be the phraseology adopted in some particular part of it, if .... it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within section 25".

It seems to me clear from the terms of the letters written by the 2nd Defendants to the bank in the present case directing the latter to transfer to the Plaintiffs sums of money out of the proceeds of the L/credit that their intention was to pass to the Plaintiffs complete control of the sums described therein. That being so, I think every such letter may be described as an absolute assignment. It does not purport to be by way of charge only. And as express notice in writing has been given to the bank from whom the 2nd Defendants would have been entitled to claim such chose-in-action, it is effectual in law and transfers to the Plaintiffs from the date of such notice the legal right to the chose-in-action and all legal and other remedies for the same and the power to give a good discharge without the concurrence of the 2nd Defendants.

On February 19, 1980 the bank received the proceeds of the L/credit from its New York office and, having had notice of the assignment, it ought to have immediately paid the sum of S$402,696.43 out of the said proceeds into the Plaintiffs' account. It failed to do this, so when the bank received the

2nd Defendants' letter of February 20, 1980 purporting to countermand their previous instructions what should it have done? It should have paid the said amount out of the L/credit to the Plaintiffs nevertheless or it should have applied to the court for relief by way of interpleader as advised by Lord Cranworth L.C. in *Jones* v. *Farrell*[5] At the very least, it should have informed the Plaintiffs about the 2nd Defendants' letter and given them enough time to apply for an injunction or to take any other steps to protect their interests. Instead, the bank chose to pay the proceeds of the L/credit to the 2nd Defendants.

In my judgment, therefore, the 1st Defendants are liable to pay to the Plaintiffs the sum of S$240,390.06 claimed by them with interest thereon at 9% p.a. from the February 20, 1980 to the date of this judgment with costs. The 1st Defendants are entitled to be wholly indemnified by the 2nd Defendants and I order accordingly.

Order accordingly.

Solicitors: *Laycock & Ong; Rodyk & Davidson.*

THE "REUNION"; UNI-OCEAN LINES PTE. LTD. v. KAMAL SOOD t/a TOSHIBA KAMAL ENTERPRISE

[O.C.J. (Chua J.) August 2, 1983]
[Singapore – Civil Suit No. 335 of 1980]

Shipping Law – Charterparty – Cancellation of charterparty by defendant – Claim for damages by plaintiff – Once defendant had repudiated charterparty plaintiffs need not proceed to be ready on appointed date.

Contract – Charterparty – Repudiation of – Once defendant had repudiated charterparty plaintiffs need not proceed to be ready on appointed date.

The plaintiffs' claim against the defendant was for loss and damage suffered by the plaintiffs as a result of the defendant cancelling the Charterparty. The said Charterparty was executed by the parties on January 16, 1980 whereby the plaintiffs agreed to carry 5000 metric tons Minmax bitumen in drums for the defendant on the M.V. "Reunion" for a voyage from Singapore to Chalna, Bangladesh. The plaintiffs were the dispondent owners of the "Reunion".

It was an express term of the Charterparty that the "Reunion" would be expected ready to load on January 10 to 25, 1980. The "Reunion" arrived in Singapore from Bangkok on January 18 and commenced discharging her cargo on the same day. The discharge of the general cargo was completed on January 22 and the "Reunion" was preparing to move to Jurong Port. However, there was no berth available although she had reserved a berth for the same day. The "Reunion" was arrested on that day too but released a day later. By telex dated January 22, the defendant cancelled the Charter and thereby repudiated the contract. The defendant contended that the failure of the plaintiffs to give the required notice under Clause 21 evinced their intention not to be bound by the Charterparty and/or evinced their inability to perform the same coupled with the arrest of the "Reunion" justified the defendant's cancellation of the Charterparty.

Held: once the defendant had repudiated the Charterparty and had evinced an intention that she no longer would ship on the plaintiffs' vessel the plaintiffs need not proceed to be ready on January 25. The onus was on the defendant to show that the plaintiffs could not be ready on January 25 when the defendant repudiated the Charterparty on January 22. The defendant must also prove that at the date of cancellation the vessel was in such a condition that the plaintiffs must necessarily – not might – be unable to comply with their obligation to load the defendant's cargo. This was what the defendant had failed to do.

Cases referred to:

(1) *Christie Vesey* v. *Helevetia* [1960] 1 Lloyd's Rep. 540.
(2) *The Madeleine* [1967] 2 Lloyd's Rep. 224.
(3) *The Mihalis Angelos* [1971] 1 Q.B. 164.
(4) *Aktiebolaget Nordiska Lloyd* v. *J. Brownlie & Co (Hull) Ltd.* (1925) 30 Com. Cas. 307.
(5) *Noemijulia Steamship Co. Ltd.* v. *Minister of Food* [1951] 1 K.B. 223.

CIVIL SUIT.

Haridass Ajaib for the plaintiffs.

S.B. Shah (*G. Murugaiyan* with him) for the defendant.

Cur. Ad. Vult.

Chua J.: The plaintiffs' claim against the defendant is for loss and damage suffered by the plaintiffs as a result of the defendant cancelling the Charterparty executed in Singapore on the January 16, 1980, by the defendant (the Charterparty), whereby the plaintiffs agreed to carry 5000 metric tons Minmax bitumen in drums for the defendant on the plaintiffs' motor vessel the "Reunion" for a voyage from Singapore to Chalna, Bangladesh.

The plaintiffs are the dispondent owners of the "Reunion". The defendant carries on business in Calcutta, India. The Charterparty was dated January 10, 1980, but was executed in Singapore on January 16, 1980, by the defendant's local representative, Jim Ellis.

On the January 10, 1980, the "Reunion" was